STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

D'ARRIGO BROTHERS CO. OFCALIFORNIA,REEDLEY DISTRICT #3 , Respondent,	)	No. 75-CE-95-F
and	)	3 ALRB No. 31
UNITED FARM WORKERS OF AMERICA, AFL-CIO Charging Party.	)	

DECISION AND ORDER

This decision has been delegated to a three-member panel. Labor Code § 114 6.[1/]

On December 23, 1976, Administrative Law Officer Leo Weiss (hereinafter ALO) issued his decision in this case. All parties filed timely exceptions.

Having reviewed the record, we adopt the ALO's finding, conclusions and recommendations except as modified herein.

In September, 1975, the UFW began an organizing campaign at D'Arrigo Brothers of California, Reedley District #3. As part of that campaign, organizers attempted to enter the respondent's property pursuant to 8 Cal. Admin. Code S 20900 (1975) , re-enacted as § 20900 and 20901 (1976) . It is alleged by the General Counsel that on four separate occasions UFW organizers were denied access by the respondent to its employees:

[1/]All references, unless otherwise indicated, are to the California Labor Code.

one occasion at Arrants Ranch on September 27, 1975; two occasions at Cella Ranch on September 27 and October 2, 1975: and one occasion at Ranch Ten on October 10, 1975. The ALO found that only the one occasion on October 10, 1975, amounted to an unfair labor practice under § 1153(a). He dismissed the other three charges. We agree with his findings that there was no unfair labor practice committed at Cella Ranch on September 27, 1975, and that respondent committed an unfair labor practice on October 10, 1975, but disagree with his findings as to no violation of § 1153(a) on September 27, 1975, at Arrants Ranch, and October 2, 1975, at Cella Ranch.

We begin our examination by noting that we reject the ALO's contention that an unfair labor practice under § 1153(a) cannot be committed by the respondent if its representative only spoke "in normal tones of voices" or actual force was not applied. More properly, the test should be not the tone of voice used by the respondent's agents, but whether or not the respondent's conduct tended to interfere with employeerights under § 1152. We stated in § 20900.5 of our access regulation (1975) that "the rights of employees under Labor Code §1152 [shall] include the right of access by union organizers...." Preventing access by union organizers which interferes with employees' rights under § 1152, no matter how peacefully it is accomplished, violates § 1153(a)-

Despite our rejection of the ALO's reasoning, we conclude that the evidence supports his conclusion that there was no

violation of § 1153(a) by the respondent on September 27 at Cella Ranch. The testimony shows that most employees had already gone home before the UFW organizers arrived and were told that they could not enter the property. The supervisor who gave the warning then left. The UFW organizers, who were then free to enter, chose not to do so because of the small number of employees in the area. Thus, this confrontation did not result in the denial of access nor the infringement of any employee's § 1152 rights and will not support a finding of an unfair labor practice for violating § 1153(a).

On September 21, however, UFW organizers arrived at Arrants Ranch when pay checks were being handed out by two supervisors. The organizers were told by the supervisors that they were trespassing and should not be there. Many employees left while this conversation went on. The UFW organizers decided to leave rather than directly confront the supervisors who remained in the area by trying to talk to the small number of remaining employees. We find that the actions of the respondent's representatives in denying access at this time violated the employees' § 1152 right to receive information from organizers. Accordingly, we overturn the ALO's finding that there was no violation of § 1153(a).

We disagree also with the ALO's findings as to the October 2 incident. A threat to call the sheriff to arrest for trespass the UFW organizers on the property for legitimate organizing purposes constitutes an unfair labor practice. The ALO's belief that the threat was "immediately extinguished by

the fact that...the supervisor who made it...had no radio..." (page 8 of ALO proposed report) is belied by the fact that the supervisor sent other employees to see that the sheriff was called. Such a threat is a violation of employee rights whether or not it could be immediately carried out.[2/] Therefore, we find that the respondent violated § 1153(a) by its actions on this occasion.

The Remedy

We modify the recommended order of the ALO on posting, mailing and reading of the Notice to Workers only to the extent necessary to clarify the obligations of the respondent.

The General Counsel and charging party excepted to the ALO's recommendations that the charging party as part of the remedy not be given access .to respondent's bulletin boards or expanded access for campaigning and organizing, that it not be awarded litigation expenses, and that the respondent's reports on its compliance be under penalty of perjury. We agree with the ALO's recommendation that these remedies not be ordered. However, we do not necessarily approve of the ALO's reasoning and find only that the facts in this case do not warrant such remedies.

The charging party also excepted to the ALO's recom-

[2/]The employer claimed that the employees were working at the" time of the confrontation. However, the evidence shows that the organizers had been advised by a company supervisor that lunch would be at 11:30 a.m. that day. They were entitled to rely on that advice. The mere presence of organizers on the employer's property, at a time specified by the employer as the lunch break, is not a violation of the access rule. The organizers were entitled to enter the property and to wait for the actual break to occur.

mendation that no damages be awarded for emotional distress suffered by its organizers as a result of the respondent's violation of the Act. We dismiss the exception as no evidence was introduced by the charging party on this issue.

The ALO ordered that the respondent furnish a list of its bargaining unit employees to the union and regional director "not later than 10 days after the notice herein is required to be posted". § 20910 of 8 Cal. Admin. Code, as amended in 1976, already requires that such lists be provided upon a 10 percent showing of interest if and when an election campaign is begun. We decline to order that any lists be provided the charging party as part of the remedy for the violations of 11.53(a) in this case.

Accordingly, IT IS HEREBY ORDERED that the Respondent D'Arrigo Brothers Co. of California, Reedley District #3, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Denying access to respondent's premises to organizers engaging in organizational activity in accordance with the Board's access regulations. 8 Cal. Admin. Code §§ 20900 and 20901 (1976) .

(b) Interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in § 1152 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) The respondent shall immediately notify the

regional director of the Fresno regional office of the expected time periods in 1977 in which it will be at 50 percent or more of peak employment, and of all the properties on which its employees will work in 1977. The regional director shall review the list of properties provided by the respondent and designate the locations where the attached NOTICE TO WORKERS shall be posted by the respondent. Such locations shall include, but not be limited to, each bathroom wherever located on the properties, utility poles, buses used to transport employees, and other prominent objects within the view of the usual work places of employees. Copies of the notice shall be furnished by the regional director in Spanish, English and other appropriate languages. The respondent shall post the notices when directed by the regional director. The notices shall remain posted throughout the respondent's 1977 harvest period or for 90 days, whichever period is greater. The respondent shall exercise due care to replace any notice which has been altered, defaced or removed.

(b) A representative of the respondent or a Board agent shall read the attached NOTICE TO WORKERS to the assembled employees in English, Spanish, and any other language in which notices are supplied. The reading shall be given on company time to each crew of respondent's employees employed at respondent's peak of employment during the 1977 harvest season. The regional director will determine a reasonable rate of compensation to be paid by the respondent to all non-hourly wage employees to compensate them for the time lost at this reading and question and

answer period. The time, place and manner for the readings shall be designated by the regional director after consultation by a Board agent with respondent. The reading shall be on a day in which the normal number of employees shall be working on the crew. A Board agent shall have the right to be present for each reading. Immediately following each reading, the Board agent will indicate to the employees present his or her willingness to answer any questions regarding the substance or administration of the Agricultural Labor Relations Act, and shall answer any such questions. The Board agent shall insure that only employees be present during the question and answer period.

(c) Respondent shall hand out the attached NOTICE TO WORKERS (to be printed in English, Spanish and other languages as directed by the regional' director) to all present employees, and to all' employees hired in 1977, and mail a copy of the Notice to all of the employees listed on its master payroll for the payroll period immediately preceding the filing of the petition for certification in October, 1975.

(d) Notify the regional director, in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the regional director, the respondent shall notify him periodically thereafter in writing, what further steps have been taken in compliance with this order.

IT IS FURTHER ORDERED that the Complaint herein be dismissed insofar as it alleges violation of the Act by the

respondent on September 27 at Cella Ranch.

Dated: April 7, 1977

Gerald A. Brown, Chairman

Richard Johnsen, Jr., Member

Ronald Ruiz, Member

NOTICE TO WORKERS

After a trial where each side had a chance to present their facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide if they want a union. The Board has told us to send out and post this Notice.

We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

(1) to organize themselves;

(2) to form, join or help unions?

(3) to bargain as a group and choose whom they want to speak for them;

(4) to act together with other workers to try to get a contract or to help or protect one another;

(5) to decide not to do any of these things.

Because this is true we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing any of the things listed above.

Especially:

WE WILL NOT ask you whether or not you belong to any union, or do anything for any union, or how you feel about any union;

WE WILL NOT threaten you with being fired, laid off, or getting less work because of your feelings about, actions for, or membership in any union

WE WILL NOT fire or do anything against you because of the union;

WE WILL NOT prevent union organizers from coming onto our land to tell you about the union when the law allows it;

WE WILL NOT interfere with your rights to get and keep union papers and pamphlets.

D'ARRIGO BROS. OF CALIFORNIA,
REEDLEY DISTRICT #3

By: _____
(Representative) (Title)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MUTILATE.

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

OF THE STATE OF CALIFORNIA

D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, REEDLEY DISTRICT #3	)	
and	)	Case No. 75-CE-95-F
UNITED FARM WORKERS OF AMERICA, AFL-CIO	)	

Michael H. Kalkstein. and
Deborah Warren, Esqs.
for the General Counsel.

John T. Hayden and
Jordan L. Bloom, Esqs., of
Littler. Mendelson & Fastiff,
for the Respondent

Stephen Soriano, Esq.. for
the Charging Party

PROPOSED REPORT

Statement of the Case

LEO WEISS, Administrative Law Officer: The United Farm Workers of America, AFL-CIO (hereinafter called "the Union"), having filed a charge in this matter with the Agricultural Labor Relations Board against D'Arrigo Brothers Company of California, Reedley District #3 (hereinafter called "the Respondent"), the Board issued a Complaint and Notice of Hearing, dated October 13, 1975. The Complaint alleges that the Respondent engaged in various acts of interference with, and restraint and coercion of, its employees in the exercise of their rights guaranteed in Section 1152 of the Agricultural Labor Relations Act, and thereby violated Section 1153(a) of the Act. Such interference, restraint, and coercion are alleged to have occurred as a result of the Respondent's denial "to representatives of the Union, access to its premises for the purposes of engaging in organizational activity with respect to its employees in accordance with Section 20900 of the Board's regulations."

The Respondent filed an Answer to the Complaint, denying its substantive allegations and the commission of unfair labor practices. The Answer also contained several affirmative defenses, the first three of which attacked the validity of the Board's emergency regulation entitled, "Access to Workers in the Fields by Labor Organizations."[1/] In these affirmative defenses, the Respondent contended that the regulation was in violation of the Constitution of the United States and the Constitution of the State of California, that it was contrary to Section 602 of the California Penal Code, and that it exceeded the scope of the Act itself, and was, therefore, unenforceable. As its fourth affirmative defense, the Respondent alleged that the Union possessed "...alternative means of contacting employees sufficient to permit said employees to exercise their rights guaranteed them by Section 1152 of the Act." [2/]

Pursuant to the Notice of Hearing, this case was tried before me in Fresno, California, on October 28 and 29, 1975. Upon the entire record made in this proceeding and my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following:

Findings of Fact

I. The Respondent

The Respondent admitted that it is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

The Respondent further admitted in its Answer and at the hearing that the following-named persons have been, at all times material herein, agents and supervisors of the Respondent within the meaning of Sections 1140.4(c) and 1140.4(j) of the Act.

- Richard Binns

- John Joe Henry

[1/] 8 Cal. Adm. Code, Part II, Ch. 9, Sec. 20900(5).

[2/] During the course of the hearing, I denied the General Counsel's motion to strike the fourth affirmative defense described above. My denial was appealed to the full Board by virtue of its special permission to the General Counsel to do so while the hearing was taking place. On November 10, 1975, my ruling was reversed by an order of the Board directing me "to strike the Respondent's fourth affirmative defense and to disallow any evidence introduced in support of said defense." I hereby strike the fourth affirmative defense and strike from the record any evidence which may have been introduced in support of said defense.

- Paul De Leon

- Aron Pulido

- Crispin Trinidad

At the hearing, the parties also stipulated as follows:

> That during the end of September and early October, specifically including the dates of September 27 and October 2nd, D'Arrigo Brothers' employees were harvesting crops on the vine on property owned by Home Ranch Company, also known as Cella. D'Arrigo Brothers had purchased the crop on the vine on the property of Home Ranch, and D'Arrigo Brothers' employees were in there harvesting the crop that they had purchased.

II. The Union

The Complaint alleged and the Respondent admitted at the hearing that the Union has been,-at all times material herein, a labor organization within the meaning of Section 1140.4(f) of the Act.

III. The Alleged Unfair Labor Practices

On August 29, 1975, The Board adopted the above-described emergency regulation, which reads, in part, as follows: 3/

> 5. ...the Board will consider the rights of employees under Labor Code Sec. 1152 to include the right of access by union organizers to the premises of an agricultural employer for the purpose of organizing, subject to the following limitations:
>
> a. Organizers may enter the property of an employer for a total period of 60 minutes before the start of work and 60 minutes after the completion of work to meet and talk with employees in areas in which employees congregate before and after working.

3/This regulation was subsequently amended by the Board, but there have been no contentions herein htat such amendment would have any impact on the decision in the case at bar. The above-quoted regulation was in effect at the time the Respondent is alleged to have committed the unfair labor practices which are the subject matter of this proceeding.

b. In addition, organizers may enter the employer's property for a total period of one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an established lunch break, the one-hour period shall include such lunch break. If there is no established lunch break, the one-hour period may be at any time during the working day.

c. Access shall be limited to two organizers for each work crew on the property, provided that if there are more than 30 workers in a crew, there may be one additional organizer for every 15 additional workers.

d. Upon request, organizers shall identify themselves by name and labor organization to the employer or his agent. Organizers shall also wear a badge or other designation of affiliation.

e. The right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery. Speech by itself shall not be considered disruptive conduct. Disruptive conduct by particular organizers shall not be grounds for expelling organizers not engaged in such conduct, nor for preventing future access.

The Complaint alleges that the Respondent violated this emergency regulation on September 27, October 2, and October 10, 1975, when it sought to prevent representatives of the Union from entering its premises for the purpose of engaging in organizational activity with respect to its employees, thus "...interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 1152 of the Act."

Section 1153(a) of the Act makes it an unfair labor practice for an agricultural employer to interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152.

On September 27, 1975, between 11:30 a.m. and noon, Ricardo Garza and three other Union representatives went to the property known as the Cella Ranch, where employees of the Respondent were working. Paul De Leon, one of the Respondent's supervisors, approached Garza and told him that "...the Employer's present policy was that the organizers could not speak to the workers during their working hours." He also stated that "...Garza could contact supervisor Dick Binns regarding the orders" which Garza had received from the Company. At this point, De Leon drove away, leaving Garza to speak to employees who were then coming out of the field. They told Garza that work had actually stopped at around 11:00 a.m. and that everyone was going home. Whereupon, Garza and the other organizers left.

On the same day, at approximately the same time, two other Union organizers, William Kirkland and Humberto Gomez, appeared at a property known as the Arrants Ranch, where the employees of the Respondent were being paid. Two supervisors, Crispin Trinidad and Paul De Leon, each spoke to the organizers and told them they had no right to be there and were trespassing. After these conversations, the supervisors left and the organizers remained on the premises. When they realized how few workers were left on the property by that time, the organizers also left.

On October 2, 1975, at approximately 11:30 a.m., Gomez and three other Union organizers went to the Cell a Ranch to speak to the Respondent's employees. They were met by two supervisors; the first one was named John Joe Henry, the other was Aron Pulido.

Henry told them they had no right to be on the property and that they would need passes from Supervisor Dick Binns to remain. Gomez testified that Henry had previously told him that lunch was usually at 11:30 a.m. For that reason, he had come back at that time. Henry told them again to get off the property and that he was going to call the sheriff. Actually, he had no radio in his truck and told someone nearby to call another supervisor.

Aron Pulido arrived then and reiterated that they would need passes from Binns in order to go into the fields. He also stated that there was no fixed lunch hour because the employees were working on piece rates. Gomez then declared that the organizers would come back at quitting time which would be about an hour later. When they did return between 12:45 p.m. and 1:00 p.m., they found most of the employees had already gone. The organizers then left as well.

On October 10, 1975, at approximately 5:30 a.m., Union organizers Gomez and Kirkland arrived at a property owned by the Respondent and known as Ranch Ten. This was an assembly point for the Respondent's employees, from which they were transported in company vehicles to their work assiqnments in the fields. They were met by Supervisor Crispin Trinidad, who told them they were trespassing on private property.

He told them, "If you want to talk to the people you go ahead and go outside and have a talk with them. But, at this moment, you are really trespassing."

At one point, Kirkland boarded a bus parked on the premises and spoke to the employees who were awaiting transportation elsewhere. Trinidad followed him into the bus and told Kirkland again that he was trespassing. Neither time did Kirkland and Gomez leave the property.

Subsequently, Trinidad informed Supervisor Paul De Leon by radio what was happening and suggested he call the Sheriff's office. This was done. At 6:05 a.m., Deputy Sheriff Robert Kierejczyk was dispatched to Ranch Ten, where he arrived at 6:40 a.m.

The deputy testified at the hearing that he was met by De Leon and Trinidad upon his arrival at Ranch Ten. De Leon told him about the earlier incidents and stated that he wanted to place Kirkland and Gomez under citizen's arrest. De Leon arrested first Kirkland, then Gomez, in the deputy's presence. After the arrests, both men were placed in the sheriff's car until some time later in the day, when they were taken to the jail and booked. Neither of them was ever prosecuted for their participation in these events.

This is the Respondent's conduct which is alleged by the General Counsel to constitute unfair labor practices under the Act. While the Respondent generally does not deny engaging in the conduct described above, it does deny that it thereby violated the Act.

The affirmative defenses contained in the Respondent's Answer contend that the access rule is invalid because it violates the Constitution of the United States, the Constitution of the State of California, Section 602 of the California Penal Code (the trespass statute), and the Agricultural Labor Relations Act itself. In addition, the fourth affirmative defense (which has been stricken) alleged that even if the access rule were valid, it was not violated in this case because the Union had available to it alternative effective means of contacting the employees, making access to the employer's property unnecessary to effectuate the purposes of the Act or to protect the rights of employees under Section 1152.

Subsequent to the filing of briefs herein, every single one of these arguments was considered by the California Supreme Court and rejected. 4/ The Court's rulings control here and I, therefore, reject all of the Respondent's contentions described above.

The Respondent further contends that its conduct during the four incidents described above do not constitute violations of the access rule and are, therefore, not in violation of Section 1153(a) of the Act. Let us examine each of these incidents in turn.

4/Agricultural Labor Relations Bd. v. Superior Court, 16 C. 3d 3~92 (3-4-76), cert den. U. S. Sup. Ct.. 10-4-76.

At the Cella Ranch, on September 27, 1975, a Union organizer was met by a supervisor who told him that 1t was against the Respondent's policy to allow Union organizers into the fields. After a short conversation, the supervisor drove away. The organizer remained for a while longer, then realized that most of the employees had already gone home, many having left even before he arrived. He then departed. The organizer was asked by the General Counsel at the hearing, "Is the reason that you did not go Into the field because of (the supervisor's) orders?" He responded as follows, "No, they (the remaining employees) just told us that they had all gone, and there' was no use of going in."

The unfair labor practice with which the Respondent 1s charged herein is described in Section 1153(a) of the Act as being "To Interfere with, restrain, or coerce" employees. These strong terms can hardly be ascribed to a statement by one of the Respondent's representatives that it did not want Union organizers on Its premises. No force was used. No threats were made. No effort was made by the Respondent to actually prevent access to the property. When the supervisor drove away, the organizers were still standing at the edge of the property and could easily have entered the fields without opposition. The record shows that they did not do so because most of the employees had already gone home, not because of anything said or done by the Respondent. Under these circumstances, the allegation that the Respondent denied the Union access to the Cell a Ranch on September 27, 1975, and thereby violated Section 1153(a) should be dismissed and I will so recommend.

The same must be said for the other incident which took place that day at the Arrants Ranch. Two supervisors told the Union organizers that they had no right to be on the property and that they were trespassing. According to Kirkland's testimony, this was said "in normal tones of voices." No threats were made and, after the conversation, the supervisors went back to distributing pay checks to the employees, the same thing they were doing when the organizers arrived. At that time, Kirkland and Gomez decided to leave because, as Kirkland testified, "Number one, there were not many people left to talk to, and number two, we were told by two supervisors that we were trespassing." I find that the Respondent's conduct in this Instance did not constitute a denial of access to the Arrants Ranch and did not "Interfere with, restrain, or coerce" employees. I will recommend that the allegations concerning this Incident be dismissed.

The third incident, which again took place at the Cella Ranch, this time on October 2, 1975, Is a closer case because one of the supervisors did threaten to call the sheriff to have the organizers evicted- Aside from that, the supervisors stated that the Union representatives had no right to be on the property and that they would

need passes from Supervisor Dick Binns in order to remain on the premises. Supervisor Aron Pulido also stated that the employees would be finished with work in about an hour and that the organizers could speak to them outside the property at that time.

The organizers did leave and came back in 45 minutes, only to find that, as Gomez testified, "...the workers were through for the time. They were leaving already, so we did not get no time to talk to them." The organizers then left also.

I find that the organizers left the premises both times that day without actually being denied access by the Respondent. The threat to call the sheriff was immediately extinguished by the fact that Henry, the supervisor who made it, had no radio with which to make such a call and that Pulido arrived to take charge of dealing with the organizers. Pulido made no such threat. Again, the nature of this conversation was so low-keyed that it cannot be considered interference, restraint, or coercion. Certainly, when the organizers returned* found most of the employees gone, and then left without even talking to a supervisor, no unfair labor practice was committed by the Respondent. I will recommend that these allegations be dismissed. 5/

The fourth incident, the one which took place on October 10, 1975, on Ranch Ten, which is the property of the Respondent, is a different story. At that time, the sheriff was called when the supervisors were unable to persuade the Union organizers to leave the premises. De Leon, for whose conduct the Respondent is liable, placed the two organizers under citizen's arrest for trespassing on the Respondent's property.

Since the organizers were properly on the premises in accord with the Board's access rule, they were not trespassing. Since they were neither trespassing nor violating the law in any other respect, their purported citizen's arrest was without legal foundation. It was, rather, an unlawful effort on the Respondent's part to eject the organizers from the property while they were rightfully engaged in organizing the Respondent's employees. It thus violated both the access rule and Section 1153(a) of the Act.

5/In making the above-described recommendations, I assume, without deciding, that all the requirements contained in the access rule had been met in these situations. The Respondent has questioned this. If the conditions contemplated by the access rule did not exist, or if the Union was not in compliance, there would perhaps be other grounds for dismissing these allegations. But because I will recommend dismissal of these charges, I find it unnecessary to resolve such issues.

The Respondent seeks to defend its conduct that day on the grounds of several access rule violations by the Union. It contends first that the rule was violated by the organizers' presence on the property at 5:30 a.m., when work was scheduled to begin at 7:00 a.m. The portion of the rule cited by the Respondent reads as follows:

> Organizers may enter the property of an employer for a total period of 60 minutes before the start of work and 60 minutes after the completion of work to meet and talk with employees in areas in which employees congregate before and after working.

According to the Respondent, that language gives the organizers permission to arrive at 6:00 a.m., one hour before the start of work. Having entered the Respondent's property prior to that time, the organizers lost the protection of the rule and could be removed by the supervisors or the deputy sheriffs. I find no merit in this contention.

The rule contemplates the Union's presence "for a total period of 60 minutes before the start of work." It says nothing about when that 60 minutes is to begin, only that it is not to exceed one hour in total and that it is to be "before the start of work." Thus, I would find nothing inconsistent with this language if the Union had spent four separate 15-fninute periods on the Respondent's premises between 5:00 a.m. and 7:00 a.m. that morning. In fact, that is the only reasonable interpretation of the language, for to rule otherwise would make the expression, "for a total period of 60 minutes" meaningless.

Another component of the Respondent's defense is the argument that the access rule was violated by the Union organizer who boarded the bus to speak to the employees. The whole purpose of allowing union representatives access to the employer's property is to permit them to discuss unionization with the employees. That is the rule. They cannot do this unless permitted to go where the employees are. The rule contains no contrary language. It makes no distinction between indoors and outdoors.

It is Important to note that by boarding the bus the organizer did not in any way disrupt the Respondent's operations. When that happens, in some future case, it will be necessary to decide whether such misconduct results in loss of the Union's rights under the access rule. Suffice it to say that it did not happen in this case. The bus was parked on the Respondent's property, some employees were already aboard waiting to be transported to the work place, the organizer made no effort to stay on the bus for the ride to the fields, and there was no way in which he violated his responsibilities under the access rule.

For these reasons, I find that this contention of the Respondent is likewise without merit.

The final contention made by the Respondent is that the Administrative Law Officer erred at the hearing when he rejected its efforts to introduce evidence purporting to show that during August, 1975, the Union was allowed access to the employees while on the Respondent's property "on many occasions".

Its brief states:

> This program of voluntarily allowed access was strenuously objected to by a great many of the respondent's employees and that those employees asked the respondent to curtail the program and that the program was in fact curtailed pursuant to that request from the respondent's employees.
>
> The access rule has validity only insofar as it protects the rights of agricultural employees. If those employees decide they do not want union organizers to speak to them on the property where they work, then the rationale and the validity of the access rule no longer exist.

The reason for my rejection of the Respondent's offer of proof was that I considered the preferred evidence irrelevant to the issues in this case.

First of all, the fact that an employer has once freely admitted union organizers to his premises does not justify his subsequent violation of the access rule, any more than a person's failure-to commit a crime on one occasion justifies his committing a crime on another occasion. Nor does the fact that the Respondent previously allowed Union representatives to enter its premises have any probative value in determining whether it had the legal right to deny them access on October 10, 1975.

Furthermore, the only method recognized by the Act as an effective form of employee expression against union organizing is the Board-conducted election. Informal conversations, hand-written petitions, letters of protest, as well as other paraphernalia of a bygone era have now given way to the secret ballot. That is the principle which underlies this Act and without which its promises will never be fulfilled. The fact that an employer thinks his employees do not want a union on the premises is irrelevant, no matter how well-founded in fact it may be. I reaffirm my rejection of the Respondent's offer of proof in this matter.

The record herein raises another question which, in spite of the fact that it was not litigated by the parties, seems to me to require a ruling. According to the evidence, the Union organizers were on the Respondent's property from 5:30 a.m. until arrested at approximately 6:40 a.m. This is a period of 70 minutes or more, exceeding by at least 10 minutes the amount of time permitted by the access rule. It is perhaps belaboring the obvious to hold that the running of the 60 permissible minutes was tolled by the supervisors' efforts to remove the organizers from the premises, their lengthy arguments with the organizers, their threats to call the sheriff, and the events immediately preceding the citizen's arrest. Nevertheless, I so hold.

Upon all of the foregoing and upon a preponderance of the testimony taken before me in this matter, I find that the conduct of the Respondent at its own premises on October 10, 1975, constitutes interference, restraint and coercion of its employees in the exercise of the rights guaranteed to them by Section 1152 of the Act and is, therefore, an unfair labor practice under Section 1153 (a) of the Act.

IV. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

In addition, the General Counsel has listed ten items of affirmative relief which he proposes for adoption in this proceeding to remedy the unfair labor practices committed by the Respondent. This is a standard request, made by the General Counsel in numerous cases, and previously ruled upon by me in Pandol & Sons and United Farm Workers of America, AFL- CIO. 6/ I find that the rulings concerning the remedy which I made in Pandol are appropriate in the instant case and I will, therefore, quote substantially from that decision in addressing the individual points raised by the General Counsel.

The General Counsel proposes that the Board's notice in this case be communicated to the employees in three different ways.

- Posting of the notice.

- Mailing of the notice to employees' homes.

- Reading of the notice to employees.

6/ 75-CE-S6 F; 75-CE-89 F.

Posting of the notice is a customary remedy and presents no special problems in this case. Mailing and reading of the notice have both previously been used on occasion by the NLRB when it thought that a conventional posting would be inadequate because of the scattered nature of the work force, illiteracy or language problems, or the force of the employer's coercive influence. I find all three elements generally present in the agricultural areas of the state of California and expressly find them present in the instant case.

Use of all three methods of communicating the Board's Notice will make it more likely that each individual employee will be reached in at least one, or perhaps more, of the ways. This is a desirable result. I find, therefore, that these remedies are appropriate in this case because they are necessary to effectuate the policies of the Act. I will, accordingly recommend that the Board adopt the General Counsel's proposed remedies in these respects. 7/

The General Counsel also requests that the Respondent be required to furnish a list of the names and addresses of its employees to the Union. In view of the fact that this has become standard procedure 1n all ALRB matters upon the filing of an election petition, I see little reason for denying this request herein. I feel it is a particularly appropriate remedy where the Respondent's unfair labor practices, as they did here, interfered with the Union's efforts to compile such a list by directly contacting the employees.

Another request by the General Counsel is that the Respondent be required to file periodic reports illustrating compliance with the Board's Order, "...under penalty of perjury." If all he means by that is the type of report usually required by the NLRB, he is entitled to 1t and I will grant his request. It is my understanding that one is required to tell the truth when making such reports, but I do not know if it is perjury to fail to do so. Perjury is a very complex subject.

7/ In Valley Farms and Rose J Farms, 2 ALRB No. 41 (1976), the Board denied the General Counsel's request for posting a notice on the ground that there was no central gathering place for employees which would be appropriate for posting. It denied his request for mailing copies of the notice on the ground that the Respondent did not have the home addresses of the employees. And it denied his request for reading of the notice to a meeting of employees on the ground that reinstatement of an illegally discharged employee, together with payment to him of back pay, would give the employees adequate assurance that the Respondent would not retailiate against them for union activities. Whatever may be the merits of the Board's position in that case, the record in this case does not show the existence of the elements upon which the Board relied there. I find Valley Farms, therefore, not controlling on these points.

If the General Counsel is seeking to transform an unfair labor practice into a criminal offense by use of the term "perjury," he is not on strong ground. The requirement for the filing of periodic compliance reports will not contain the expression "...under penalty of perjury," but this will not weaken the requirement to tell the truth.

The General Counsel further requests that the Respondent's bulletin board be made available to the Union so that it may post notices. I find nothing in the Act which contemplates that a campaigning union shall have such a device available to it for the purpose of recruiting members. The access rule is a detailed grant of a Union's right to campaign on the employer's property and it does not include the use of bulletin boards. I find the General Counsel's request inappropriate.

I must likewise reject the General Counsel's proposal that I recommend "Compensation for such emotional distress as Charging Party may have suffered." Since the Charging Party herein is the United Farm Workers of America, an incorporeal institution which, to the best of my knowledge, is incapable of suffering emotional distress, just as it is incapable of being happy or sad, or crying or laughing, I find this prayer of the General Counsel not to be well-taken.

Another element of the-relief prayed for by the General Counsel is "Expansion of the United Farm Workers Union's right to access on employer's property prior and during next peak season." I am not sure what is meant by that, but I find no legal authority to grant "expansion." My recommended Order will contain a provision requiring the Respondent to allow the Union to exercise its rights under the access rule. This is what the Respondent previously denied to the Union and this is what the Union is entitled to. No argument has been made by the General Counsel to show why more than this is appropriate nor has any evidence been presented to support the request. It is, therefore, denied.

The General Counsel also proposes that the Respondent be directed to make "a public apology" to its employees. I find this to be an extraordinary suggestion. I am not aware that such remedies have been available in the United States since the Puritans took down their stocks and pillories and stopped branding adultresses. 8/ Humiliation of violators has no place in the enforcement scheme of this Act. Even the most heinous criminal offenders are not punished by being required to publicly apologize to their victims. Certainly, the violators of a civil statute should not be treated in a more scornful manner. I reject this prayer of the General Counsel.

8/See Hawthorne, The Scarlet Letter.

The last of the General Counsel's ten requests is best described, I think, by quoting it in full.

> Reimbursement by the employer to the United Farm Workers Union and to the Board for expenses incurred in the investigation preparation, presentation and conduct of this case, including but not limited to, reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diem and any other reasonable costs and expenses.

This unusual request is accompanied neither by the strong legal arguments that might make it persuasive, nor by any evidence to show that it might be appropriate. A request of this nature cannot even be considered unless the General Counsel can show extreme bad faith in the Respondent's conduct. That would require evidence of conduct which is so baldly a violation as to make the Respondent's defenses a sham. It is hard enough to prove this in any situation, but at the beginning of the enforcement of a statute like this one, it is virtually impossible.

The Respondent's principal defense in this case was the alleged invalidity of the access rule. Can I say that such a position was taken in bad faith and constituted a mockery of the Board, when various judges of the Superior Court of the state of California and three dissenting Justices of the Supreme Court have taken the same position?

I will be willing to face the question of imposing costs on a respondent in an unfair labor practice case when the General Counsel is able to show the bad-faith nature of the violation, the insubstantial nature of the defenses raised, and the consequent compelling of the Board to spend money uselessly for the purpose of processing the case. Nothing like that has been shown in the instant proceeding and, accordingly, I deny the General Counsel's request.

Upon the basis of the foregoing findings of fact and upon the entire record in this case, I hereby make the following:

Conclusions of Law

1. The Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

2. The Union is a labor organization within the meaning of Section 1140.4(f) of the Act.

3. By preventing Union representatives from having access to Its premises for the purpose of organizing the employees, 1n violation of Section 20900 of the Board's emergency regulations, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 1153(a) of the Act.

4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 1152 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 1153(a) of the Act.

5. Respondent did not engage in unfair labor practices in violation of the Act by virtue of its conduct on September 27, 1975 and October 2, 1975.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended: 9/

ORDER

Respondent, D'Arrigo Brothers Company of California, Reedley District No. 3, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Preventing or attempting to prevent Union representatives from having access to its premises for the purposes of organizing the employees, in violation of Section 20900 of emergency regulations, known as the Board's "access rule."

(b) In any like or related manner Interfering with, restraining or coercing employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in such activities.

9/In the event no exceptions are filed as provided by Section 1160.3 of the Act, the findings, conclusions, and recommended Order herein shall become the findings, conclusions, and Order of the Board and become effective as herein prescribed.

2. Take the following affirmative action which I find is necessary to effectuate the policies of the Act:

(a) Post at its premises copies of the notice marked "Appendix." Copies of said notice, on forms provided by the appropriate Regional Director, after being duly signed by the Respondent, shall be posted by it for a period of 90 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material. Such notices shall be in both English and Spanish.

(b) Mail a copy of the notice, in both English and Spanish, to each of the employees in the bargaining unit, at his or her last known address, not later than 30 days after the notice is required to be posted on the Respondent's premises.

(c) Read a copy of the notice, in both English and Spanish, to gatherings of its bargaining-unit employees, at a time chosen by the Regional Director for the purpose of giving such notice the widest possible dissemination.

(d) Furnish a list of the names and last known addresses of all its bargaining-unit employees not later than 10 days after the notice herein is required to be posted, to the Regional Director and to the Union.

(e) Notify the Regional Director, in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply herewith. Upon request of the Regional Director, the Respondent shall notify him periodically thereafter, in writing, what further steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the Complaint herein be dismissed insofar as it alleges 'violations of the Act by the Respondent on September 27, 1975 and October 2, 1975.

Dated:

Leo Weiss

Leo Weiss
Administrative Law Officer

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE AGRICULTURAL LABOR RELATIONS BOARD
An Agency of the State of California

After a trial at which all sides had the opportunity to present their evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act, and has ordered us to post this notice and we intend to carry out the order of the Board.

The Act gives all employees these rights:

To engage in self-organization;
To form, join or help unions;
To bargain collectively through a representative of their own choosing;
To act together for collective bargaining or other mutual aid or protection; and
To refrain from any and all these things.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT prevent Union representatives from coming on our premises, in accordance with the Board's "access rule," for the purpose of organizing the employees.

WE WILL respect your rights to self-organization, to form, join or assist any labor organization, or to bargain collectively in respect to any term or condition of employment through United Farm Workers of America, AFL-CIO, or any representative of your choice, or to refrain from such activity, and WE WILL NOT Interfere with, restrain or coerce our employees in the exercise of these rights.

You, and all our employees are free to become members of any labor organization, or to refrain from doing so.

D'ARRIGO BROTHERS COMPANY OF CALIFORNIA
_____REEDLEY DISTRICT NO. 3____
(Employer)

Dated _____ By_____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 90 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office.